REGD. GOA - 5

Panaji, 14th January, 1999 (Pausa 24, 1920) SERIES II No. 42

OFFICIAL GAZETTE

GOVERNMENT OF GOA

NOTE: There are two Extraordinary issues to the Official Gazette, Series II No. 41 dated 7-1-99 as follows:

1) Extraordinary dated 7-1-1999 from pages 611 to 614 regarding Notification from Department of Labour.

2) Extraordinary No. 2 dated 11-1-1999 from pages 615 to 616 regarding Notification from Department of Industries.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Cooperative Societies

Order

No. 1-4-76/EST/RCS

Read: Letter No. COM/II/11/11 (1)/91 dated 30-6-1998 from the Secretary, Goa Public Service Commission, Panaji-Goa.

On the recommendation of the Goa Public Service Commission vide letter referred to above, the following Officers holding the posts of Senior Auditor/Senior Inspector/ Special Recovery Officers in the office of the Registrar of Cooperative Societes are hereby promoted as Special Auditor/Cooperative Officers in the pay scale of Rs. 5500-175-9000 (Group 'B' Non-Gazetted) on officiating basis and posted against the post shown against each of their names:—

Sr. No.	Name and Designation of the Officers	Place of posting
1	2	3
1.	Shri M. B. Bhavsar, Sr. Auditor/Sr. Inspector/ /Special Recovery Officer, Office of the Asstt. Registrar of Coop. Societies, North Zone, Mapusa.	Cooperative Officer, Office of the Asstt. Registrar Coop. Societies (Dairy), Ponda against the vacancy caused due to demise of Shri G. D. Chari.
2.	Shri E. B. Mascarenhas, Sr. Auditor/Sr. Inspector/ /Special Recovery Officer, Office of the Asstt. Registrar of Coop. Societies South Zone, Margao.	Special Auditor, Office of the Asstt. Registrar of Coop. Societies (Dairy), Ponda against vacancy caused due to promotion of Shri Fernando Bonamis.
3.	Shri Ronnie Dias, Sr. Auditor/Sr. Inspector/ /Special Recovery Officer, Office of the Registrar of Coop. Societies, Head-quarters, Panaji.	Cooperative Officer, Office of the Asstt. Registrar of Coop. Societies, Central Zone Panaji against the vacancy caused due to promotion of Shri S. S. Volvoikar.
4.	Shri D. M. Naik, Sr. Auditor/Sr. Inspector/ /Special Recovery Officer, Office of the Asstt. Registrar of Coop. Societies Central Zone, Panaji.	Special Auditor, Office of the Asstt. Registrar of Coop. Societies, Central Zone, Panaji against the vacancy caused due to retirement of Shri C. M. Terani.

The above promotees may exercise their option for fixing their pay within one month from the date of receipt of this order.

This order shall come into force from the date of taking over the charge of their new posting. The concerned Asstt. Registrars should relieve them immediately.

By order and in the name of the Governor of Goa.

S. D. Dessai, Registrar of Cooperative Societies & Ex-Officio Jt. Secretary.

Panaji, 6th October, 1998.

Order

No. 62-3-88/RCS/TS

Read: 1) This office order No. 62-3-88/TS dated 13-7-1995 appointing a Committee of Administrators on Sanjiwani Sahakari Sakhar Karkhana Ltd., Dayanandnagar, Goa.

2) This office order No. 62-3-88/RCS/TS /945 dated 25th July, 1995 appointing an additional member on the Committee of Administrators to Sanjiwani Sahakari Sakhar Karakhana Ltd., Dayanandnagar, Goa.

In supersession of this office orders of even number referred to above and in exercise of the powers vested in me under sub-section (1) of Section 78 of the Maharashtra Coop. Societies Act, 1960 as in force in the State of Goa, read with sub-rule (1) of Rule 61 of the Coop. Societies Rules, 1962 as framed thereunder, I, S. D. Desai, Registrar of Coop. Societies, Goa hereby appoint a Committee of Administrators consisting of the following persons to manage the affairs of Sanjiwani Sahakari Sakhar Karakhana Ltd., Dayanandnagar, Goa.

1.	Shri Pandurang K. Bhatale, Mencure, Bicholim, Goa.	— Chairman.
2.	Shri Vishnu Prabhu, MLA, Sanvordem, Goa.	— Member.
3.	Shri Rajendra Prabhu Desai, Molem, Sanguem, Goa.	— Member.
4.	Shri Gurudas Keshav Parab, Mencurem, Bicholim, Goa.	— Member.
5.	Shri Madhukar Deu Raut, Sal, Bicholim, Goa.	— Member.

This order shall come into force with immediate effect.

S. D. Desai, Registrar of Coop. Societies Goa.

Panaji, 6th October, 1998.

Notification

No. 19-12-94/TS

In exercise of the powers conferred by the proviso to section 28 of the Maharashtra Cooperative Societies Act, 1960 (Maharashtra Act XXIV of 1961), as in force in the State of Goa, the Government of Goa hereby specifies in respect of the following class of Cooperative Societies a higher amount not exceeding Rs. 6000/- and Rs. 15000/- respectively, as shown in the Schedule below, for the purpose of proviso to the said Section 28 until further orders.

SCHEDULE

Class of societies	Limit specified
(1) Salary Earners Coop. Credit Society.	Rs. 6000/-
(2) Urban Coop. Credit Society.	Rs. 15000/-

By order and in the name of the Governor of Goa.

S. S. Byali, Registrar of Cooperative Societies and Ex-Officio Jt. Secretary.

Panaji, 27th October, 1995.

Notification

No. 60/209/95/TS

In exercise of the powers vested in me under Section 9(1) of the Maharashtra Cooperative Societies Act, 1960 as applied to the State of Goa, the Goan People's Urban Co-operative Bank Ltd., Panaji-Goa is registered under code Symbol No. RCS-Bank-5/GOA/95.

S. S. Byali, Registrar of Cooperative Societies.

Panaji, 30th October, 1995.

Certificate of Registration

The Goan People's Urban Co-operative Bank Ltd., Panaji-Goa is registered on 30th October, 1995 and it bears registration code symbol No. RCS-Bank-5/Goa/95 and it is classified as "Cooperative Bank" under sub-classification No. 3(b)-Other Banks in terms of Rule No. 9 of the Co-operative Societies Rules, 1962 for the State of Goa.

S. S. Byali, Registrar of Cooperative Societies.

Panaji, 30th October, 1995.

Department of Education, Art & Culture

Directorate of Technical Education

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Order

No. 17/4/78/98-DTE/7884

Read: Memorandum No. 17/4/78/98-DTE/7439 dated 19-11-98.

On recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/1/5/15(4)/95/316 dated 20-10-98, Government is pleased to appoint Shri Bhagat Govind Vishnoo on temporary basis to the post of Lecturer in Civil Engineering (Group 'A' Gazetted) in Government Polytechnic, Panaji, on an initial pay of Rs. 2200/- in the pay scale of Rs. 2200-75-2800-100-4000/- with effect from the date of joining the post as per the terms and conditions contained in the Memorandum cited above.

Shri Bhagat Govind Vishnoo will be on probation for a period of two years.

The appointment is further subject to the verification of character and antecedents.

By order and in the name of the Governor of Goa.

A. K. Bidkar, Director of Technical Education & Addl. Secy.

Porvorim, 15th December, 1998.

Order

No. 17/4/77/98-DTE/7992.

Read: Memorandum No. 17/27/92-EDN (Part) (Col)/5991 dated 16-10-98.

On recommendation of the Goa Public Service Commission conveyed vide their letter No. COM/I/5/34(2)/98 dated 3-9-98, Government is pleased to appoint Shri Paresh W. Pai Asnodkar, on temporary basis to the post of Lecturer in Electronics Engineering (Group 'A' Gazetted) in Government Polytechnic, Panaji, on an initial pay of Rs. 2200/- in the pay scale of Rs. 2200-75-2800-100-4000/- with effect from the date of joining the post as per the terms and conditions contained in the Memorandum cited above.

Shri Paresh W. Pai Asnodkar will be on probation for a period of two years.

The appointment is further subject to the verification of character and antecedents.

By order and in the name of the Governor of Goa.

A. K. Bidkar, Director of Technical Education & Addl. Secy.

Porvorim, 23rd December, 1998.

Department of Labour

Order

No. 28/29/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 17th January, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/30/90

Shri Kanta D. Gaonkar &
Shri Tulshidas U. Gaonkar — Workman/Party I

V/s

M/s Central Quepem V. K. S. S.
Society Limited. — Employer/Party II

Panaji, Dated: 26-12-91.

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/29/90-LAB dated 13th July, 1990 has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Central Quepem V. K. S. S. Society Limited, Quepem in terminating the services of S/Shri Kanta D. Gaonkar, Secretary, and Tulshidas U. Gaonkar, Weighman, with effect from 7-9-1989 is legal and justified?

If not, to what relief the workmen are entitled?"

2. On receipt of this reference a case at No. IT/30/90 was registered and notices were issued to both the parties, in pursuance of which they appeared and submitted before the Court that there is every possibility of settling the matter out of Court and for that purpose, the case was adjourned from time to time. Finally, on 21st December, 1991 both the parties appeared before this Tribunal and submitted a settlement which has been duly recorded by me. I have gone through the terms of settlement and I have found that they are certainly in the interest of the employees whose services were terminated by Party II and hence I accept the submission made by both the sides that a consent award be passed in terms of this settlement. I, therefore, pass the following order:

ORDER

1. It is agreed between the parties that the workmen namely (1) Shri Kanta D. Gaonkar and (2) Shri Tulshidas U. Gaonkar shall be re-instated in service w. e. f. 1-2-1992 without any back wages.
2. It is agreed between the parties that the workmen shall be paid the wages at the rate existed on the date of their termination i. e. at Rs. 300/- per month.
3. It is agreed by the workmen that they shall not be entitled for back wages from 7-9-89 to the date of joining.
4. It is agreed between the parties that in view of reinstatement of the workmen, Miss Lina Cardozo, Secretary and Mr. Jose Fernandes, Weighman shall be retrenched from services, they being rendered surplus to the requirements of the Society.
5. It is agreed between the parties that in view of this settlement, they do not have any dispute with the Society and all their claims are fully settled.
6. No order as to costs.
7. Inform the Government accordingly about the passing of the award.

Sd/-

(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

No. 28/39/91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th January, 1993.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/43/91

Shri Janardhan A. Kamat. — Party I / Workman
V/s
M/s Chowgule Industries Ltd. — Party II / Employer

Party I in person.

Party II is represented by Adv. M. S. Bandodkar.

Panaji, Dated: 17-12-92.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes, Act, 1947, the Government of Goa, by its order No. 28/39/91-LAB dated 28-10-1991 has referred the following issue for adjudication by this Tribunal:

"Whether the action of the management of M/s Chowgule Industries Ltd. Vasco, in terminating the services of Shri Janardan A. Kamat, Sales Representative, with effect from 5-11-1990, is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of this reference a case at No. IT/43/91 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings.

3. Party I- Shri Janardan A. Kamat (hereinafter called as 'Employee') has filed his statement of claim at Exb. 3, wherein he has averred as follows:

That Party I, was employed as a Sales Representative by Party II-M/s Chowgule Industries Ltd. Vasco (hereinafter called as the 'Employer-Company' on pay scale of Rs. 995-30-1145-35-1495 with total emoluments of Rs. 1843/-. However, on 16-5-90 the Party I-Employee was suspended by the Depot Incharge without having any administrative authorisation and without assigning any reason. Thereafter, a domestic enquiry was held on several dates, but it is the grievance of the employee that the Inquiry Officer was appointed by the Management and he recorded findings against the employee just to please the Management. On receipt of favourable findings from the I. O., the Management terminated the services of the employee w.e.f. 5-11-1990. At the time of termination, he was paid only subsistence allowance from the dates of suspension till 30-9-1990. It is the say of the employee that he was sincere, honest and conscientions employee and that he put in hard efforts to promote the Company's interests with full responsibility. However, a Senior Officer was implementing some wrong policy and he was engaged in corrupt activities, which caused harm to the Company's business. Hence, the employee brought all these facts to the notice of the Management, However the concerned Sr. Officer, in order to safeguard his own interest misguided the management and made bogus reports against the employee and submitted to the Management. However, it is the say of the employee that all charges levelled against him were false. Hence, the employee has claimed that the order of termination passed against him is illegal and void and hence the same should be set aside and he should be paid a sum of Rs. 195000/- (Rupees one lakh ninety five thousand) the particulars of which have been given in para. 9 of Exb. 3.

4. Party II-M/s Chowgule Industries Ltd., by its written statement at Exb. 4 resisted the employee's claim contending interalia as follows:

The entire reference made by the Government is bad in law and ought to be rejected, in as much as Party I- employee is not a 'Workman' within the meaning of S. 2 (s) of the Industrial Disputes Act, 1947. He was not entrusted with any manual, technical, skilled or clerical work and was drawing a pay of Rs. 1935.25 p.m. By virtue of his designation as a Sales Representative, he was mainly performing duties of sales promotion and as such he does not fall within the ambit of S. 2 (s) of the I. D. Act. During the course of his employment, the employee was charged with grave and serious charges of misappropriation of Company's funds and hence he was dismissed after holding a fair and proper enquiry. After anxiously considering the report of the I.O., and the explanation given by the employee dated 24-10-90, the Management found that the employee was guilty of serious charges and hence he was dismissed by a letter dated 4-11-90. In view of the seriousness of the charges proved against the employee Company submits that it was fully justified in dismissing the employee. There was no fault to be found out in the domestic enquiry carried out against the employee. Party II-Company has denied the employee's averements made in para. 4 to 9 and has contended that the order of dismissal passed against the employee is perfectly just and legal and calls for no interference by this Tribunal.

5. Thereafter Party I-Employee filed a rejoinder (Exb. 5) wherein he controverted all the material contentions of Party II-Company and again reiterated his claim by contending that he was appointed as a Sales Representative and was working on a van to sell the consumer products to the retailers and dealers in various parts of Goa. He was preparing Invoices, Receipts for cash and was maintaining Ledger, Stock-Registers and was submitting Reports of Sales, collections to the Management. He has also contended that there were no complaints against him and hence the findings recorded by the I.O. are perverse, on the basis of which the impugned order of dismissal is passed. He has therefore reiterated his claim for reinstatement and for payment of lumpsum of Rs. 195000/-.

6. On these pleadings, I framed as many as five issues at Exb. 6. However, issue No. 1 is framed in view of the employer's contention that Party I is not a workman, and since the said issue goes to the root of the case, the same was treated as preliminary issue. In proof of that issue, Party I-J. A. Kamat examined himself and he produced some documents. No oral evidence was led on behalf of party II-Company. Thereafter, on considering the arguments of both the sides, I now proceed to consider the following issue No. 1 in the beginning. To the same issue is answered in the negative, it follows that the subsequent issues would not survive for consideration and the reference will have to be rejected.

Issue No. 1. Whether Party No.1 is a Workman as defined in the Industrial Disputes Act?

7. My findings on the above issue is in the negative for the reasons stated below:

REASONS

8. Now, the main contention that has been raised by party II-Company is in substance to the effect that Party I, J. A. Kamat, is not a 'workman' as defined in S.2 (s) of the I.D.Act. The said section, in substance lays down that a 'Workman' means, "Any person employed in any Industry to do any manual, un-skilled, skilled, technical, operational, clerical or supervisory work for hire or reward etc." Sub-Clause (iv) of S.2 (s) lays down that, "Any person employed in a supervisory capacity and drawing wages exceeding Rs. 1600/- per month is not a Workman". Thus, bearing in mind the definition of workman, as given in Industrial Disputes Act, I now proceed to consider the evidence led by the parties.

9. Party I- Shri J.A. Kamat in his evidence at Exb. 7 has stated that since 1.10.84 he was serving as a Salesman with Party II. He was looking after the sales of consumer products in the North Goa market. He has produced appointment letter and the letter of confirmation which are at Exb. 8 and 9. Exb. 8 shows that he was appointed as a Salesman (vide entry in column No. 1). In Exb. 9 also the workman's designation has been shown as "Salesman". However it is the contention of Shri M. S. Bandodkar for Party II that initially Party I was employed as a Salesman but thereafter he was promoted to the post of Sales Representative. There is ample evidence to prove that in fact Party I was serving as a Sales Representative, when his services were terminated.

10. Shri Bandodkar has made a pointed reference to the admissions given by Party I in his pleadings. In the claim statement itself, even in the opening paragraph Party I has stated thus:

"That I was working as a Sales Representative, on pay scale.....with total monthly emoluments of Rs. 1843.-."

After the Written Statement was filed, Party I submitted a Rejoinder at Exb. 5 wherein he has again reiterated his contention in para. 1 in the following words:

"Para. 1 -.....My designation was as Sales Representative. Since my appointment, I was working on 'Van to sell the

consumer products to the retailers, dealers in various parts in Goa."

11. Apart from these candid admissions in the pleadings, the employee has also admitted in his cross examination thus:

"It is true that I have stated in my statement of claim that I was appointed as a Sales Representative. In the Rejoinder also I confirmed the same fact."

12. In view of these admissions it is obvious that although initially Party I was employed as a Salesman, still in due course of time, he was promoted to the post of Sales Representative till he came to be discharged. Now, apart from the designation which was bestowed upon him, we will have to see the nature of duties performed by him. In his cross examination Party I-Janardan A. Kamat has stated that Party II was dealers in Electric goods, plastic items, biscuits, pharmaceuticals items etc. He was given a van and he used to canvass for the goods and used to give direct delivery on cash and credit basis. He has further admitted that he used to move in all places in North Goa for canvassing sales. He used to receive orders for Narmada Cement.

13. Thus, reading the employee's oral evidence, it is obvious that as a Sales Representative, it was his duty to canvass for the goods in which Party II was dealing and to obtain orders and also to give delivery either on cash or on credit. This being the nature of his duties, we will have to see whether he is a workman as defined in S. 2(s) of the I. D. Act.

14. Now, regard being had to the nature of duties performed by the employee at the time of termination of his services, it is obvious that he was not doing any manual, skilled or un-skilled work nor was doing technical, operational or clerical work. Although he used to prepare invoices and maintain cash books, ledger etc., that cannot be considered to be his main duty. His main duty was to canvass for the goods and to obtain orders and to give delivery on payment of cash or on credit. Besides, it is an admitted fact that the last salary which he was drawing was more than Rs. 1600/- p.m. as admitted by him. In view of this state of affairs, Shri Bandodkar is perfectly justified in contending that Party I-Employee is not a 'Workman', as defined in S. 2 (s) of the Act. Party I has relied upon three rulings in the case of;

1 — Mullar and Philipps (India) Ltd. v/s Workmen ...6 FJR 171.

2 — National Tobacco Company v/s Hafiz Ahmed...1954-I LLJ 160.

3 — Western India Match Co., v/s Workmen ... AIR 1964 SC 472. (1963) 2 LLJ 459.

However, Shri Bandodkar, has relied upon a recent ruling of the Division Bench of our High Court in the case of S. G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. and U. D. Pademwar and others reported in 1 LLJ 430. In that case Their Lordships have considered as many as 17 reported cases of different High Courts and of Supreme Court and have ultimately concluded that Medical Representative is not a Workman as defined in S. 2(s) of the Act. For arriving at the aforesaid conclusion Their Lordships have also considered a Supreme Court ruling in the case of Burmah Shell Oil Storage and Distrubution Co., v/s The Burmah Shell Management Staff Association and others, 1970-II-LLJ 590. In that case Their Lordships of the Supreme Court were considering the post of District Sales Representatives and for holding that the District Sales Representative is not covered by the definition of 'Workman' given in S.2 (s) of the Industrial Disputes Act. Their Lordships have observed thus:

"The case of District Sales Representative is clearly that of a person who cannot fall within any of the four classes, because his work cannot be held to be either manual, clerical, technical of supervisory. The work of canvassing and promoting sales cannot be included in any of these four classifications. He is, therefore, not a Workman at all within the principal part of the definition."

Thus, respectfully following the ratio in the above referred rulings, it will have to be concluded that the main or the substantial part of the duty carried out by party I-J. A. Kamat was of canvassing and promoting the sale of the goods of Party II. For that purpose, he used to move in a Van and solicit orders from the petty dealers or stockists of the goods in which Party II was dealing. Although, he was preparing receipts or maintaining cash books or even writing ledgers, still that was an incidental part of his duty, but the main duty performed by him was to canvass for the goods and to solicit orders for promoting the sales of Party II. In view of this state of affairs, he was rightly designated as a Sales Representative of Party II. At the cost of repetition, I would say that even in the absence of the order appointing him as Sales Representative (which was attempted to be produced by Party II, but was objected by Party I and hence not admitted in evidence), Party II has in unequivocal terms admitted his designation as Sales Representative in his claim statement and also in his Rejoinder. The said fact has also been admitted by him in his oral testimony and the same is repeated in the reference made by the Govt. In view of the matter there can be absolutely no doubt to conclude that J. A. Kamat was holding the post of Sales Representative when his services were terminated. As such, he cannot fall within the ambit of the definition of 'Workman' as given in S.2 (s) of the I.D. Act and hence I answer issue No. 1 in the negative.

15. When Issue No. 1 is answered in the negative, it follows that the subsenquent issues do not survive for consideration in as much as the present reference cannot be said to be maintainable in law. I. therefore, pass the following order.

ORDER

It is hereby declared that party I Shri Janardan A. Kamat is not a Workman as defined in section 2 (s) of the Industrial Disputes Act, 1947, and hence this reference stands dismissed with no order as to costs.

Inform the Government accordingly.

Sd/-
(M. A. DHAVALE)
Presiding Officer
Industrial Tribunal

Order

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No. 28/13/91-LAB

The following ward given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

V. G. Manerkar, Under Secretary (Labour).

Panaji, 12th January, 1993.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/26/91

Shri Ravindranath A. Naik Gaonkar — Party I — Workman

V/s

M/s The Goa Agricultural Produce Market Committee. — Party II — Employer

Workman represented by Adv. P. J. Kamat.
Employer represented by Adv. A. M. Karnik.

Panaji, dated: 17-12-1992.

AWARD

In exercise of the powers conferred by clause (d) of Sub. S. (1) of S. 10 of the Industrial Disputes Act, 1947 the Govt. of Goa, by its order No. 28/13/91-LAB dated 26.6.1991 has referred the following issue for adjudication by this Tribunal.

"Whether the action of the managment of M/s The Goa Agricultural Produce Market Committee, Margao-Goa on refusing employment of Shri Ravindranath A. Naik Gaonkar, Market Attendant at Mapusa sub-Yard, with effect from 13/3/1989 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of this reference, a case at No. IT/26/91 was registered and notices were served upon both the parties, in response to which they appeared and submitted their pleadings.

3. Party I-Shri Ravindranath A. Naik Gaonkar, Market Attendant (hereinafter called as the 'Workman') has filed his statement of claim (Exb. 4) wherein, he has averred as follows:

Party I — Workman was employed as a Market Attendant by Party II-M/s The Goa Agricultural Produce Market Committee, (hereinafter called as the 'Employer') w.e.f. 17-10-88 against a vacancy of permanent nature. He was paid monthly but @ Rs. 12/- per day. The regular Market Attendant who was working earlier was getting a salary of Rs. 900/- p. m.. At the time of his appointment, there was a verbal understanding that the workman shall continue to work till a permanent vacancy of a Market Attendant is filled in by calling the names of eligible candidates from Employment Exchange. Accordingly, on two occassions the names of suitable candidates were called from the Employment Exchange but no suitable candidates was found for being posted. Now, although the vacancy was not filled in, still the services of the workman were verbally terminated w. e. f. 13.3.89 although at that time a permanent vacancy was existing. There was compulsion on the part of party II to appoint any candidate sponsored by the Employment Exchange, and hence it is the grievance of the workman that he should have been absorbed in the existing vacancy. After his services were terminated the workman raised a dispute before the Asstt. Labour Commissioner, Mapusa. However, since there was no settlement a failure report was submitted to the Government, in response to which the present reference has been made by the Government. It is the say of the workman that Party II is a Commercial Establishment as defined in the Goa, Daman & Diu Shops & Establishments Act, 1973 (hereinafter called as the 'Shops Act' for brevity) and also an Industry as defined in Industrial Disputes Act, 1947. Section 39 of the Shops Act deals with termination of services. The workman had put in service of 125 days from 17.10.88 to 12.3.89. Hence, it has been averred that the provisions contained in in S. 39 of the Shops Act were not complied with by Party II-Employer in as much as he was not given one month's notice or wages in lieu of notice and gratuity to which he was entitled. Hence, it has been submitted that the action of Party II in terminating his services in contravention of S. 39 (c) of the Shops Act is illegal and unjust and hence the same should be set aside and he should be reinstated with other incidental reliefs.

4. Party II —The Goa Agricultural Produce Market Committee, Margao, Goa, by its written statement at Exb. 6 resisted the workman's claim contending inter alia as follows:

The present reference is bad in law in as much as the same was made after the closure of the case before the Asst. Labour Commissioner on 12th Jan., 1990. While closing the said case, it was observed by the Asstt. Labour Commissioner that since the workman had not completed 240 days no industrial dispute existed and hence the matter was closed. Hence, it has been contended that the reference made by the Government is un-tenable and this Tribunal has no jurisdiction, to decide the same. It has been contended that a vacancy of Market Attendant occurred at Margao main office on 12.9.88. Hence, the Employment Exchange was intimated for sending a list of candidates. However, no suitable candidate was found from the list submitted by the Employment Exchange and as such the permanent vacancy could not be filled in. However, there were working difficulties and hence a Market Attendant from Mapusa Sub-Yard was transferred to Margao main office and the vacancy was filled in on 17.10.89. The present workman was appointed purely on temporary/casual basis on daily wages but, he was not appointed as Market Attendant. It has been contended that in view of the provisions contained in the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 Party II could not have filled in permanent vacancies without notifying the vacancy to the Employment Exchange. Hence, till a candidate is selected from the list submitted by the Employment Exchange some persons were employed purely on temporary/casual basis and this was exactly what was done in the case of the present workman. The present workman had not enrolled his name in the Employment Exchange. Had he done so then alone he could have been considered if he were sponsored by the Employment Exchange. When it was found that no suitable candidate was available Party II decided to transfer one of the employees from Curchorem Sub-Yard to Mapusa sub-yard and hence the workman was relieved from the temporary/casual employment of Party II. He was also offered his legal dues at that time. Hence, it has been contended that since the present workman was engaged on temporary or casual basis on daily rates, his services were terminated when they were no more required by Party II. In the conciliation proceedings Party II raised a contention that no industrial dispute existed between the parties since the vacancy was already filled in by transferring a permanent employee to Mapusa Sub-Yard. In the conciliation proceedings, the workman was represented by his consultant who participated in the discussions and there was an settlement that the services of the workman as Market Attendant would be continued till a regular post of Market Attendant is filled in. Thus, it is evident that the appointment of the present workman was purely on temporary or casual basis till a permanent vacancy was filled in. In view of the state of affairs, it has been contended that the present workman is not entitled to any relief whatesoever, and his claim deserves to be dismissed.

5. Thereafter Party I—Workman filed a rejoinder (Exb. 7) wherein he controverted all the contentions of Party II and reiterated his claim made in Exb. 4.

6. On these pleadings, I framed the following issues at Exb. 7.

1. Does Party No. II prove that this reference is bad in law and hence deserves to be rejected?

officiating appointment for any post for a period not exceeding six months need no previous approval of the State Marketing Officer. Rule 103 lays down the conditions under which an employee can be dismissed or removed or reduced in rank. Rule 104 lays down provisions for appeal. However, in the instant case, it has been stated by Shri Mahambre that Party I - Naik was appointed as a temporary worker and that temporary workers are not governed by the Rules of Recruitment. Similarly, D. K. Sawant, Asst. Secretary in his evidence at Exb. 16 has also stated that the workman was not given any letter of appointment because he was on temporary basis. He has also stated that the temporary workers are not required to be given any notice before discharge. Thus, regard being had to the provisions of Agricultural Produce Marketing Act and the oral evidence given by the two witnesses on behalf of the Party II, it is abundantly clear that this Market Committee is not governed by the provisions of Goa Shops Act. At the same time, it will have also be borne in mind that since a temporary appointment was given to the present workman no appointment letter was issued to him and hence there was no necessity to give any notice before termination. Over and above, it will have to be stated that, if the workman was really aggrieved by the action of Party II, then he should have resorted to the provisions contained in Rule 104 by preferring an appeal against his termination. However, no steps were taken in this behalf and hence, it will have to be observed that there is no substance in the submission made by Shri P. J. Kamat that the present case is governed by the provisions of the Shops Act.

11. Now, it is very significant to note that the present workman seeks shelter under S. 39 of the Shops Act for accrual of a right to challenge the order of termination. However, if it were so, he should have resorted to the provisions contained in S. 40 of the said Act. Instead, he raised an industrial dispute for the first time before the Asst. Labour Commissioner and initially his dispute was rejected holding that no industrial dispute existed between the parties, since the workman had not completed 240 days of service with Party II (vide contentions taken by Party II in his written statement at Exb. 6 page 1). After the same was rejected, it seems that the conciliation proceedings were again re-opened and eventually there being no settlement, a failure report was submitted to the Govt. Now, in as much as the Government was pleased to refer this dispute to this Tribunal u/s 10(1) (d) of the I. D. Act, it follows that I will have to consider the provisions contained only in I. D. Act to find out whether the present workman can successfully challenge the order of termination passed against him.

12. Now, it is almost a common ground that after the services of the workman were terminated, he did not raise any dispute before his Employer-Party II. Instead, after about 6 months, he first approached the Asst. Labour Commissioner. Now, the existence of an industrial dispute can be proved if the workman shows that he had first approached the Employer and there being no settlement he had to approach the Labour Commissioner for conciliation. Now, the position of law on this point is well settled and a reference can usefully be made to the Supreme Court ruling in the case of Sindhu Resettlement Corporation Ltd., (1968-60 FLR 307). In that case, it has been ruled that mere demand to the Government without a dispute being raised by the workman with their employer cannot become an industrial dispute. This case has been considered by Delhi High Court in the case of New Delhi Tailoring Mazdoor Union v/s S. C. Sharma & Co. (P) Ltd. In this case, it has been observed that the Bench in Sambhu Nath Goyal V. Bank of Baroda (1978 FLR 195) has not overruled Sindhu Resettlement case but has distinguished it. A reference can also be made to the case of Fedders Lloyd Corporation (Pvt.) Ltd. v/s Lt. Governor, Delhi and Others reported in AIR 1970 Delhi, 60, wherein it has been observed thus:

> "Demand by workmen must be raised first on Management and rejected by them before industrial dispute can be said to arise and exist - Making of such demand to Conciliation Officer and its communication by him to Management who rejects the same is not sufficient to constitute industrial dispute (AIR 1968 SC 529. Foll.)."

13. A similar view has also been taken by Orissa High Court in the case of Orissa Industries (P) Ltd., and Presiding Officer, Industrial Tribunal reported in 1976 LAB I. C. 285, wherein the head note runs thus:

> " Before an 'Industrial Dispute' can be said to exist between a workman and the Employer - Management, there must be a demand by the workman before the management as required by Rule 3. Only if a dispute exists between employer and workmen, a reference can be made by the State Government under section 10 (1) for adjudication of the dispute by the Tribunal. In the absence of such a dispute, if the Government is still of opinion that a dispute exists, the opinion so formed is without materials and the exercise of power by way of reference is without jurisdiction.
>
> A reference under Section 10 (5) or under S. 12 (4) and (5) would be without jurisdiction unless an industrial dispute exists between the employer and the workmen after the workmen make a demand before the management. 1968 Lab. I. C. (SC). 1970 Lab. I.C. 421 (Delhi). 1972 Lab. I. C. 676 (C). Rel. on: (1974) 2 LJ 6 (Ori.) 1970 Lab. I. C. 1119 (Pat) Dist."

14. A reference can also be made to a ruling of our High Court in the case of Iqbal Ahmad Kamaruddin and P. L. Majumdar reported in 1992 FLR (64) wherein the head note lays thus:

> " If what is referred to a Tribunal/Labour Court is not an Industrial Dispute, it is always open to a party to show to the forum that the dispute referred for adjudication, though purported to be an Industrial Dispute, is in reality not an Industrial Dispute at all. This has always been recognised as an exception to the general rule postulated in S. 10 (4). It is, therefore, always permissible for an employer to raise an issue as to whether what has been referred to is an Industrial Dispute at all and there can be no question of the Tribunal being bound by the order of reference upon a prima facie view of the matter as to the existence or apprehension of an Industrial Dispute: it is open to the parties to show that what is referred is not in reality an industrial dispute at all."

15. A similar view has also been taken by Their Lordships of Panaji Bench of Bombay High Court, in the case of Sitaram Vishnu Shirodkar and The Administrator, Government of Goa, and Others reported in 1985 I.LLJ 480.

16. Thus, relying on the aforesaid rulings, it will have to be concluded that since no dispute was raised before the Employer, it cannot be said that there existed any industrial dispute, and on this count, alone, it will have to be concluded that the present reference is not tenable.

17. Even assuming for the sake of argument that the aforesaid view taken by me is not correct and that the present reference is tenable inspite of the fact that the workman had not raised any dispute before his employer, still it will have to be observed that the workman has absolutely no case for challenging his termination.

18. Now, the evidence on record discloses that the workman was appointed purely on temporary or casual basis. He was paid daily wages @ 12/- per day. Even the workman has admitted that the salary for a permanent Market Attendant is Rs. 900/- or more. Had it been so, then the cases of Marketing Attendants would not fall under the

Shops and Establishments Act. in view of the provisions contained in S. 61 of Goa Shops, Act. Sub. S. (1) of S. 61 lays down that, nothing in this Act shall apply to employees in any establishment whose average monthly wages exceed Rs. 500/-. Thus, it is evident that the present workman was accommodated only temporarily since no permanent vacancy of a Market Attendant was filled in. Hence, he was not given any letter of appointment and as such there is absolutely nothing to know as to what were the terms and conditions on which he was appointed. However, I accept the evidence given by the two Secretaries of the Market Committee which clearly goes to show that no letter of appointment was given to the workman because he was engaged temporarily on daily wages of Rs. 12/- per day. Now, I have already pointed out that since this is a reference under the provisions of I.D.Act, we will have to see whether the order of termination is bad in law. Now, it has been rightly pointed out by Shri A. M. Karnik that the workman had not put in 240 days of service and hence the provisions of S.25F of the I.D.Act are not attracted. Hence, there was no question of issuing any notice or paying him any retrenchment compensation. In view of this state of affairs, it will have to be concluded that the workman can not successfully challenge that termination of his service. The evidence on record further reveals that Party II-Market Committee was required to notify the vacancies to the Employment Exchange and to consider whether any of the candidates sponsored by the Employment Exchange is suitable for the vacancy. Party II called for list of suitable candidates from Employment Exchange on two occasions but nobody was found suitable. Hence, the permanent vacancy of a Market Attendant could not be filled. Instead, after the services of the present workman were terminated, one person already in service was transferred to fill in the permanent vacancy. This has been deposed to by D. K. Sawant in his evidence at Exb. 16. In his cross examination, it has been brought on record thus:

> "There was no fresh appointment to the post of Market Attendant after Mr. Naik was discharged but after about one year one person was transferred from Mapusa Yard".

This admission has been brought on record in the cross examination of Mr. Sawant and as such it has a considerable evidentiary value.

19. Thus considering this state of affairs, I hold that Party I-workman has miserably failed to prove that his services were illegaly terminated by Party II-Employer or that he was refused employment from 13.3.1989. In view of the matter, it further follows that he is not entitled to any of the reliefs claimed by him and hence the reference deserves to be dismissed. I therefore, answer the issue accordingly and pass the following order.

ORDER

It is hereby declared that the action of the management of M/s The Goa Agricultural Produce Market Committee, Margao, Goa, in refusing employment to Party I-Shri Ravindranath A. Naik Gaonkar, Market Attendant at Mapusa Sub-Yard w. e. f. 13.3.1989 is perfectly legal and justified and hence Party I-Workman is not entitled to any relief.

No order as to costs. Government be informed.

(M. A. DHAVALE)
Presiding Officer,
Industrial Tribunal

Order

No. CL/Pub - Awards/98/10827

The following Award dated 20-8-98 in Reference No. IT/76/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 18th October, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri A. J. Agni, Hon'ble Presiding Officer)

No. IT/76/89

Shri Arjun S. Kuttikar, Sanguem Goa. — Workman/Party I

V/s

M/s Kadamba Transport Corp. Ltd. Panaji Goa. — Employer/Party II

Workman/Party I Represented by Shri S. V. Cuncolienkar.
Employer/Party II Represented by Adv. Shri P. J. Kamat.

Panaji, dated: 20-8-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by Order No. 28/32/89-LAB dated 27th September 1989 referred the following dispute for adjudication to this Tribunal.

> "Whether the action of the management of M/s Kadamba Transport Corporation Limited, Panaji, in terminating the services of Shri Arjun Kuttikar, Conductor, with effect from 7.11.1989 is legal and justified. If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under no. IT/76/89 and registered A/D notice was issued to the parties. In persuance to the said notice, the parties put in their appearance. The workman/party I (for short "Workman") filed his statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the workman are that he joined the services of the employer/party II (for short, "Employer") as a conductor in the year 1984. That the employer issued a charge sheet dated 30.10.87 to him alleging that he had not issued tickets to passengers and also that he had accepted money from the passengers but did not issue tickets to them, and he was also placed under suspension. That he replied to the charge sheet by letter dated 17-12-87 denying the allegations made against him and also informed the employer that in case an enquiry was to be initiated, it should be held by an impartial person. That thereafter an enquiry was conducted by the Enquiry Officer Shri G. K. Verlekar and in the said enquiry he was represented by co-workman Shri Avelino Fernandes. That the Enquiry Officer conducted the enquiry in violation of the principles of natural justice and no proper opportunity was given to him to defend himself in the enquiry. That on completion of the enquiry, the Enquiry Officer submitted his findings dated 30.6.88 holding the workman guilty of misconduct under clause 28 (vi) of the Certified Standing Orders. The workman contended that the enquiry conducted by the Enquiry Officer is void and illegal and the findings submitted by him are also perverse. That thereafter a show cause notice dated 20.8.88 was issued to him as to why his services should not be terminated, and he replied to the said show cause notice by

letter dated 29.8.89 stating that he was not agreeing with the findings of the Enquiry Officer. That however the employer terminated his services by letter dated 7.11.89. That thereafter he made a representation to the Managing Director dated 21.11.88 requesting that he should be allowed to join duties but the said representation was rejected by letter dated 24.1.1989 that thereafter he raised an industrial dispute and the Conciliation proceedings held by the Conciliation Officer, resulted in failure. The workman contended that the termination of his services by the employer is illegal and unjustified and hence he is liable to be reinstated in service with full back wages.

3. The employer filed the written statement which is at Exb. 3. The employer admitted that the workman was employed as conducter from 18th April 1984. The employer stated that on 11.10.87 the workman was on duty as a conductor on Margao-Belgaum route and when the bus was checked at Anmod at about 10.20 hours, it was found that the workman had committed irregularity by not issuing tickets to the passengers but collecting money from them and similarly on 23.10.87 when he was on duty on Poona-Margao route the bus was checked at Kolhapur and it was found that the workman had committed similar irregularities. The employer stated that the irregularities committed by the workman if proved amounted to serious misconducts under clause 28 (vi) (xv) (xxxv) and (ivi) of the Certified Standing Orders and hence charge sheet dated 30.10.87 was issued to him, and he was also placed under suspension. The employer stated that thereafter an enquiry was held in which the workman fully participated. The employer stated that the enquiry was held as per the procedure laid down in Certified Standing Orders and in accordance with the principles of natural justice and on completion of the enquiry the Enquiry Officer submitted his report holding the workman guilty of the charges as per charge sheet. The employer admitted that the workman replied to the show cause notice issued to him and stated that on considering the said reply and the seriousness of the misconduct committed by him, dismissed the workman from service by letter dated 7.11.88. The employer admitted that the workman had filed appeal against the dismissal order and that it was rejected. The employer denied that the enquiry was held in violation of the principales of natural justice or that the workman was not given opportunity to defend himself in the enquiry, or that no evidence was established against the workman in the enquiry. The employer stated that the services of the workman were terminated after following the legal procedure and that the dismissal of the workman was justified considering the seriousness of the misconduct committed by him. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties following issues were framed at Exb. 5.

1. Whether a correct and proper enquiry was conducted against the workman for dereliction of duties regarding the incidence dated 11th and 23rd October 1987 as alleged?

2. If so, whether the principles of natural justice were followed during the conduction of the enquiry and whether the workman fully participated in the enquiry by examining himself, his witnesses and cross examining the employer's witnesses as alleged?

3. If so, whether the management was right in acting on the report of the I. O. duly submitted to it at the end of the enquiry as alleged?

4. If so, whether the action of the management based on the report of the I.O. in terminating the services of the workman is just and proper in the circumstances of the case and whether it does not call for any interference?

5. If not, to what reliefs, is the workman entitled to?

5. The issue nos. 1 and 2 were treated as preliminary issues as they were touching the fairness of the domestic enquiry held against the workman. The parties led evidence on the said issues and this Tribunal by findings dated 2. 4. 1990 answered the said issues in the affirmative holding that the enquiry held against the workman was fair and proper and in accordance with the principles of natural justice. Thus the issue Nos. 1 and 2 stood disposed of. By the said order the parties were directed to lead evidence on the other issues and accordingly the parties led evidence.

6. My findings on the remaining issues are as under:

Issue No. 3 In the affirmative.

Issue No. 4 The punishment awarded is just and proper and no interference in punishment awarded is called for.

Issue No. 5 The workman is not entitled to any relief.

7. Besides making oral submissions the parties also filed notes of written arguments. In fact the arguments were to be advanced on issue nos. 3, 4 and 5 as the issue nos. 1 and 2 were already decided. However, Shri S. V. Cuncolienkar representing the workman advanced arguments on Issue nos. 1 and 2 also. His main contention is that Shri A. P. Gracias, could not have been appointed as the Presenting Officer in the enquiry proceedings as he had conducted the preliminary enquiry. On this ground and on several other grounds he urged that the enquiry conducted against of the workman is not fair and that it was held in violation of the principles of natural justice. He also relied upon various decisions of the Supreme Court and the High Courts in support of his contention. The various contentions raised by Shri Cuncolienkar on the issue of domestic enquiry cannot be considered now for the simple reason that this Tribunal has already given the findings on the issue nos. 1 and 2 by order dated 7.9.91 which were treated as preliminary issues. By the said order it has been held that the enquiry held against the workman is fair and proper and in accordance with the principles of natural justice. The workman had filed Review application against the findings of this Tribunal on the issue nos. 1 and 2 and the said Review application was dismissed by order dated 20.1.1992. It is nothing but abuse of the process of law on the part of the workman to reagitate on the issue nos. 1 and 2 before this Tribunal when the said issues have been already decided and the Review application filed by him is also dismissed. This being the case the question of considering the submissions made by Shri S. V. Cuncolinenkar on the issue nos. 1 and 2 does not arise.

8. *Issue No. 3:* Shri Cuncolienkar, representing the workman, submitted that the findings of the Enquiry Officer are based on surmises and conjuctures and there is no cogent evidence to hold the workman guilty of the charges. He submitted that the findings of the Enquiry Officer are therefore liable to be set aside. He relied upon the decision of the Calcutta High Court in the case of Hindustan Paper Corporation and others V/s Manindra K. Ghosh reported in 1991 (63) FLR 151 and that of the Bombay High Court in the case of Deepak Mukund Rai Trivedi V/s Municipal Corporation of Greater Bombay reported in 1996 I CLR 1082. He submitted that the charge no. 1 if held to be proved would at the most be negligence on the part of the workman in carrying out his duties and not misconduct. As regards the charge no. 2 he submitted that there is no evidence as to what is the exact amount that was collected from the passengers and what was the exact amount found from the workman. He submitted that the amount of Rs. 171/- handed over by the workman at the Margao Depot was borrowed by him from his friend which shows that he had not collected money from the passengers as alleged by the employer as otherwise there was no need for the workman to borrow money

from his friend and hand over the same at the Margao Depot. He submitted that the enquiry officer failed to consider the above explanation given by the workman. He further submitted that no opportunity was given to the workman to corss examine the passengers whose statements were recorded by the checking staff and therefore the said statements cannot be relied upon. In support of his this contention he relied upon the decision of the Bombay High Court in the case of Pandurang Kashinath Wani V/s Divisional Controller, M.S.R.R.C. Dhule and others reported in 1995 LLR 694.

Adv. Shri P. J. Kamat, the learned counsel for the employer submitted on the other hand the charges levelled against the workman vide charge sheet dated 30.10.87 are proved in the enquiry by sufficient oral as well as documentary evidence. He submitted that the allegations made against the workman are proved through the evidence of Shri Gracias and the statements of the passengers recorded by the checking staff. He submitted that the statements of the passengers were recorded in the presence of the workman as admitted by him and therefore the contention of Shri Cuncolienkar that they cannot be relied upon is not correct. He submitted that the workman in his statement Exb. M5 has admitted that he has collected Rs. 40/- from each passenger instead of Rs. 57/- each and that he had not issued tickets to them. He submitted that this statement of the workman is supported by the statement given by the passengers to the checking staff and thus the first charge against the workman is proved. As regards the second charge he submitted that in the enquiry it is established that six passengers were found travelling without ticket. He submitted that the workman has contended that out of the six passengers 4 were children who were below the age of 3 years and hence they could not be charged fare, however, this is not supported by the statement recorded by the checking staff. He submitted that it is difficult to believe that any person would allow the children below 3 years of age to travel alone or in the company of a deaf and blind person. He further submitted that the names of the said passengers show that they are not from one family. Adv. Shri Kamat submitted that in the proceedings before the Labour court or in an enquiry the standards of a criminal trial are not applicable. In this respect he relied upon the decision of the Bombay High Court in the case of S. K. Avasthi v/s M. R. Bhope, reported in 1994 I CLR 254, and that of the Supreme Court in the case of Bharat Cooking Coal Ltd., v/s Bhuti Kumar Singh and others reported in 1994 II CLR 1083. He submitted that in the enquiry sufficient evidence has been led by the employer to prove the charges against the workman and the findings of the Enquiry Officer are based on the said evidence on record and not on surmises and conjuctures as contended by the workman.

9. In the present case the records of the enquiry proceedings have been produced at Exb. 11 colly. In the enquiry, charge sheet has been produced at Exb. M-I which is dated 30.10.87. It is a settled law that the Tribunal has powers to reappraise the evidence led by the parties in the domestic enquiry. The Supreme Court in the case of Workmen of M/s Fire Stone Tyre & Rubber Co. of India Pvt. Ltd. v/s The Management and Others reported in AIR 1993 SC 1227 has held that since the introduction of Sec. 11-A in The Industrial Disputes Act, 1947, the Tribunal is clothed with the power to appraise the evidence in the domestic enquiry and satisfy itself as to whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman. In the case of E. Merck (India) Ltd; v/s V. N. Parulekar and others reported in 1991 (2) Bom. C. R. 201 the Bombay High Court has held that it is the duty of the Tribunal to reappraise the evidence and satisfy itself as to whether misconduct against the workman is proved or not. It is therefore to be seen whether the evidence led in the enquiry establishes the misconduct alleged against the workman and whether the findings of the Enquiry Officer are based on such evidence or not. I have gone through the entire evidence led by the parties in the enquiry proceedings.

10. The first charge against the workman as per the charge sheet dated 30.10.87 Exb. M-1 is that on 11.10.87 when he was on duty on vehicle no. GDM165 on Margao-Belgaum route, the said bus was checked by the checking staff at Anmod at 10.20 hrs. and at that time six passengers were found to be travelling without tickets and out of the said six passengers, four were half pay passengers. In the said charge it is alleged that out of the said six passengers one passenger was travelling from Sanvordem to Belgaum, two children were travelling with their parents from Sanvordem to Belgaum, one child was travelling with his father from Sanvordem to Khamapur, one child was travelling with his father from Gudi (Quepem) to Belgaum and one passenger was travelling from Mollem to Anmod. It is the case of the employer that the workman did not collect fare from the said passengers nor issued tickets to them, and therefore default notice cl. No. 0698 was issued to him for the above irregularities.

As regards the allegation against the workman that he did not collect fare from 4 half pay passengers nor issued tickets to them, the Enquiry Officer in his findings dated 30.6.88 has held that this allegation against the workman is not proved. Though the Enquiry Officer has held so, in my opinion there is sufficient evidence to prove this allegation against the workman. It is a settled law that in a domestic enquiry strict and sophisticated rules of evidence under the Evidence Act do not apply. All deductions which are logically probative for a prudent mind are permissible and even hearsay evidence is admissible. The statement of the said six passengers including that of the 4 children has been produced at Exb. M-13 (a) and M-13 (b). In the said statement the 4 children whose names are mentioned therein have been described as half passengers, which means they were liable to pay half fare. The statements which are in the printed form were recorded in the presence of the workman as per the deposition of Shri Gracias MW-2, the witness for the employer. The workman did not deny this part in the cross-examination of the said witness. Besides, below the statement of the said passengers, the statement of the workman is recorded and there is an endorsement that the statement of the said passengers is recorded in his presence. The workman has taken the defence that since the said 4 children were below the age of 3 years, no fare was collected from them nor tickets were issued to them as per the instructions from the management. Now, if this was so, the workman ought to have raised the objection at the time when it was mentioned in the statement Exb. M-13 (a) and (b) that the said 4 children are half passengers. The workman ought to have mentioned in his statement which is recorded below the statement of the passengers that the said 4 children are not half passengers but they are below the age of 3 years. The workman did not do so. Also, the statement Exb. M-13 (a) is signed by the three children. It is hard to believe that a child who is below the age of 3 years would sign a statement and that too in English. In fact if it is the case of the workman that the 4 children were below the age of 3 years, he ought to have examined some witness in support of his this contention. He could have examined the driver who was driving the bus on the day of the incident. However, he did not do so. Another important factor to be noted is that after the checking of the bus and finding the irregularities default notice was given to the workman which is produced at Exb. M-11. In the said default notice the workman was asked to submit his explanation and accordingly he submitted his reply which is produced at Exb. M-12. In the said reply the workman never stated that the 4 children were below the age of 3 years and therefore he did not collect the fare from them. On the contrary he has stated in the reply that one blind and deaf person was travelling from Sanvordem to Belgaum with his four children and that when he asked for the ticket he nodded his head and hence he thought that some colleague of his would pay their fare. If the children were below the age of 3 years, the workman would not have asked for their fare from the said person. This itself shows that the children were not below the age of 3 years. The defence that the children were below the age of 3 years is raised by the workman for the first time when he filed reply to the charge sheet. This clearly shows that it is by way of an

after thought. In the circumstances, the allegations against the workman that he did collect fare from 4 half passengers nor issued tickets to them stands proved.

In the first charge the other allegation against the workman is that he did not collect fare from two passengers, that is one passenger who was travelling from Sanvordem to Belgaum and the other passenger who was travelling from Mollem to Anmod. The workman in his reply to default notice and to the charge sheet as well as in his evidence has admitted this fact. Therefore the fact remains that he did not collect fare from the said two passengers nor issued tickets to them. However, he has tried to give an explanation that the passenger who boarded the bus at Sanvordem was deaf and blind and when he went to him for issuing ticket the said passenger shook his head towards the front direction and therefore he thought that somebody from the front would pay his ticket. This explation of the workman is hard to digest. In the first place there is no evidence that the passenger who boarded the bus at Sanvordem was a deaf and blind person. The statement Exb. M-13(a) is signed by that person. If he was blind he would not have signed the said statement. The workman has not led any evidence to show that the said passenger was deaf and blind. Even if it is accepted that the said passenger was deaf and blind, there was ample time for the workman to collect the fare of this passenger. The workman in his cross examination has admitted that nobody purchased the ticket for the said passenger at the back or the front of the bus. He has stated that he did not ask for the ticket from said passenger again because by that time the bus had reached Mollem. One fails to understand as to why the workman did not collect the fare from the said passenger till the time the bus reached Mollem. The passenger had boarded at Sanvordem and till the time the bus reached Mollem the workman had sufficient time to collect the fare from him when nobody paid the fare for the said person. Not only that, the bus was checked at Anmod which is at a distance of about 20 Kms. from Mollem as suggested to the workman in his cross examination and which suggestion is not denied by him. Therefore after Mollem also the workman had sufficient time to collect fare from the said passenger, but he did not do so. Therefore, there is no substance in the explanation given by the workman for not collecting the fare from the passenger who had boarded at Sanvordem. As regards the other passenger who boarded the bus at Mollem, the only explanation which the workman has given in his reply Exb. M-12 to the default notice and in his deposition is that he asked the said passenger to give money for tickets which he refused to give and that he also refused to tell his destination. The workman in his cross examination has admitted that when a person does not pay the fare nor discloses his destination it is the duty of the Conductor to stop the bus and make the passenger get down. If the workman was aware of the above duty he ought to have stopped the bus and asked the passenger to get down. The workman did not do so. By the time the said passenger had boarded the bus at Mollem and the bus was checked at Anmod the bus had travelled about 20 Kms, but the workman did not take any action. Therefore it is difficult to accept the explanation given by the workman and the said explanation cannot be believed. The Enquiry Officer in his findings has held that the irregularity of permitting the above said passengers to travel without ticket is proved. I concur with this finding of the Enquiry Officer and it is based on the evidence on record. In the light of what is discussed above I hold that the workman is guilty of the irregularities mentioned in the first charge. I, therefore hold that the first charge against the workman is proved in the enquiry held against him.

11. The second charge against the workman is that on 23.10.87 when he was on duty on vehicle GDX 168 on Pune-Margao(Luxury) route the bus was checked at Kolhapur at 21.20 hours by the checking staff and at that time 3 passengers were found travelling without ticket from Poona to Kolhapur. The employer alleged that the workman collected Rs. 120 from the said passengers i.e Rs. 40/ from each passenger instead of Rs. 57/- from each one of them and did not issue tickets to them. The employer also alleged that the workman was caught red handed while throwing the punching machine from his pocket in the driver's cabin and on examining it two currency notes, one of Rs. 50/- and the other Rs. 10/-, were found folded inside the said machine totalling to Rs. 60/-. The workman had filed reply to the said charge which has been produced at Exb. M-2. The explanation which the workman has given in the said reply is that the three passengers boarded the bus at Swargute and in the course of the travelling when he went to them to issue tickets they told him that they had only Rs. 60/- with them. He has further stated that he told them that the ticket fare from Poona to Kolhapur is Rs. 57/- per each passenger but they started arguing with him and since they were rough people he could not force them to get down and hence he waited so that he could make complaint to the police at Kolhapur but before he reached Kolhapur bus-stop the A.T.I Gracias stopped the bus for checking. He has also stated that when the bus stopped he again told the passengers that if they did not pay the fare he would make complaint to the police and that at that time one of the passengers got up and thrushed some money his hand which he subsequently realised to be Rs. 60/- and that at the same time when he saw Mr. Gracias stepping in the bus, he became nervous and was also confused because said Shri Gracias had given him threat earlier. He has further stated that when he went to the cabin to get the way bill his punching machine and the money given by the passenger fell down in the cabin which was Rs. 60/- and it was taken by Shri Gracias. Thus as per the explanation given by the workman vide reply dated 17-12-87 Exb. M-2 there is no dispute that the three passengers had boarded the bus at Poona and were found travelling without ticket when the bus was checked by Shri Gracias at Kolhapur who was the member of the checking staff. There is also no dispute that the bus fare from Poona to Kolhapur was Rs. 57/- per each passenger and the said three passengers had not paid this fare to the workman. The statement of the workman was recorded in the enquiry on this charge No. 2. In this statement also he has admitted that no tickets were issued to the three passengers who had boarded at Swargate and that they had not paid the bus fare which was Rs. 57/- per each passenger. He has stated in his examination-in-chief that when he asked fare from the said passengers, they threatened to beat him in case he stopped the bus. He has further stated that he again asked the said passengers to pay Rs. 171/- towards bus fare and told them that he would be in trouble in case the bus was checked by the line checking staff. He has also stated that he was looking out for the nearest police station but he did not know any as he had gone on the route for the first time. The above contentions of the workman cannot be accepted. It is for the first time in his statement recorded in the enquiry that the workman has stated that he was threatened by the said three passengers with assault when he asked for the fare from them. There is no mention about this fact in the reply dated 17.12.87 Exb.M-2 filed to the charge sheet by the workman. There is also no mention in the said reply that he was looking out for the nearest police station but he did not know any as he had gone on the route for the first time. On the contrary the workman has stated in the reply that he wanted to make complaint about the passengers to the police station at Kolhapur. Therfore it is clear that the above contentions of the workman that he was threatened with assault or that he did not know any police station are nothing but by way of an after thought. Even otherwise, if it is the case of the workman that he was threatened by the passengers with assault he could have very well informed this fact to the drivers of the bus. It is in evidence that on the said bus there were two drivers. It is not the case of the workman that these two drivers were also new on the route. If this fact was reported to the drivers they would have definitely taken the bus to the nearest police station. It is also surprising as to why the workman did not report the matter to the drivers. No explanation whatsoever has come forth from the workman in this respect. The Enquiry Officer in his findings has held that the charge against the workman that three passengers were found travelling without ticket from Poona to Kolhapur is proved as also the charge that he collected Rs. 60/- from the said passengers. These

findings of the Enquiry Officer are with reasonings and based on evidence on record. The workman in his reply to the charge sheet as well as in his statement recorded in the enquiry has stated that the said passengers wanted to give Rs. 60/- towards bus fare instead Rs. 171/- and that when they got down at Kolhapur one of them thrust some money in his hands. He has stated in his statement that at the time when money was thrust in his hand he had also punch in his hand, and that thereafter he went to the bus cabin to bring the way bill. Shri Gracias, the witness for the employer, in his statement recorded in the enquiry has stated that he had observed the workman throwing the punching machine in the driver's cabin and when he asked the A.T.I., Shri Shetgaonkar to check the said punch two notes, one of Rs. 10/- and the other of Rs. 50/- were found. The workman, in the cross examination of Shri Gracias suggested that the money was not lying in the punch but was lying in the bus, which suggestion was denied by him. The workman in his reply to the charge sheet has stated that he realised subsequently that the money which was thrust in his hands by the passenger was Rs. 60. He has also stated that when he went to the cabin to get the way bill his punching machine and the money given to him fell down and that Mr. Gracias took away Rs. 60 which had fallen in the cabin. The contention of the workman that the money was thrust in his hands by the passenger is hard to be accepted. In reply to the charge sheet the workman stated that one of the passengers got up and thrust money in his hand whereas in his statement recorded in the enquiry he has stated that the passengers got afraid at the sight of the line checking staff and particularly the A.T.I. Shri Gracias and they pushed some money in his hand. Also the workman never stated in his reply to the charge sheet that the passengers pushed money in his hand because they got afraid on seeing the line checking staff and more particularly the A.T.I. Shri Gracias. One fails to understand as to why the passengers should have got afraid particularly of A.T.I. Shri Gracias, unless there was some similar incident earlier involving Shri Gracias earlier. Otherwise, there was no reason for the passengers to get afraid of Shri Gracias. In my opinion pushing the notes in the hands of the workman is nothing but a false and concocted story. Though the charge sheet states that the workman collected Rs. 40 from each of the three passengers totally amounting to Rs. 120, I agree with the findings of the Enquiry Officer that there is no evidence to prove this part of the charge. Except for the statement of A.T.I. Shri Gracias and what is mentioned in the default notice there is no other supporting evidence. The employer has produced the statememt of the three passengers at Exb. M-6, however in this statement none of the passengers has stated that each one of them had paid Rs. 40 to the workman or that the total amount paid to the workman was Rs. 120/-. The employer has also produced the statement of the workman at Exb. M-5 which was recorded on 23.10.87. In this statement it is mentioned that the workman had collected Rs. 40 from each passenger. However this statement cannot be relied upon because in the reply to the charge sheet the workman had stated that his signature on the statement was taken forcibly and that the signatures of the witnesses Shri Prakash Arkas and Mohamad Shaikh were forged. Therefore the employer ought to have examined either Shri Prakash Arkas or Shri Mohamad Shaikh to prove the said statement. The employer did not do so. Besides, the said statement was recorded before the A.T.I. Shri Shetgaokar. Therefore, in view of the denial of the said statement by the workman, it was necessary for the employer to examine the A.T.I. Shri Shetgaokar. However, the employer did not examine him. This being the case it is difficult to rely upon the statement of the workman. In the circumstances the Enquiry Officer was right in holding that the charge against the workman that he collected money from the three passengers is proved to the extent of Rs. 60/- and not Rs. 120/-. I therefore hold that with reference to the second charge against the workman it is proved that the workman collected Rs. 60/- from the three passengers who were travelling from Poona to Kolhapur though the bus fare was Rs. 57/- per each passenger and did not issue tickets to them.

12. According to the employer the above acts of the workman are misconduct under clause 28 of the Certified Standing Orders of the employer namely:

> (vi) Failure on the part of the conductor to issue any ticket and thereby permitting ticketless travel and non-issue of tickets to a passenger by a conductor after recovery of fares or issue of tickets of lesser value after recovery of correct fare from passengers.
>
> (xv) Theft, fraud or dishonesty in connection with the employer's business or property inside or outside the establishment or the theft of property of another employee within the premises of the establishment.
>
> (xxxv) Breach of any rules or instructions given by superiors for the proper functioning of safety of the establishment.
>
> (lxi) Breach of any of the provisions prescribed to be complied by a workman under the standing orders.

The Enquiry Officer has held that the acts which are proved against the workman are misconduct and may fall within the clause 28(vi) of the certified standing orders of the employer which is reproduced hereinabove. This finding of the Enquiry Officer is correct and I agree with the same. However in my view besides falling within clause 28(vi) of the certified standing orders, the said acts would be misconduct also under clause 28(xv) of the certified standing orders of the employer, because allowing passengers to travel without ticket or collecting less fare from the passengers and not issuing tickets to them is an act of dishonesty in connection with the employer's business. Shri Cuncolienkar representing the workman, has contended that the findings of the Enquiry Officer are based on surmises and conjuctures and they are not based on cogent and positive evidence and therefore the findings are liable to be set aside. In support of his this contention he has relied upon the decision of the Calcutta High Court in the case of Hindustan Paper Corporation (supra). I agree with the contention of Shri Cuncolienkar that if the findings are based on surmises and conjuctures and not on cogent evidence, they are liable to be set aside. This is a settled law. However, I do not agree with his contention that in the present case, the findings of the Enquiry Officer are not based on cogent and positive evidence. The Enquiry Officer has discussed the evidence on record and has given reasons for his findings. The findings are not based on surmises and conjuctures but are based on evidence on record. The other decision of the Bombay High Court in the case of Deepak Mukunrai Trivedi (supra) relied upon by Shri Cuncolienkar is not applicable to the present case. The Enquiry Officer has properly assessed the evidence brought on record by the employer and there is proper application of mind on the part of the Enquiry Officer. Since the report of the Enquiry Officer is based on proper evidence in the case, I hold that the employer was justified in accepting the said report and acting on the same. I, therefore answer the issue no. 3 in the affirmative.

13. *Issue No. 4*: This issue pertains to whether the action of the employer in terminating the services of the workman is just and proper in the circumstances of the case and whether any interference is called. It is a settled law that after the introduction of Sec.11-A to the Industrial Disputes Act, 1947, the Tribunal has now powers to interfere with the punishment of dismissal awarded by the employer if the Tribunal is satisfied that the said punishment imposed by the employer is not just and proper and award lesser punishment instead. While discussing the issue no. 3 it has been held by me that the charges of misconduct are proved against the workman. The employer has awarded the punishment of dismissal from service to the workman, by order dated 7.11.88. Now the question is whether this

punishment awarded to the workman is justified. Adv. Shri P. J. Kamat, the learned counsel for the employer has submitted that the employer was justified in dismissing the workman from service considering the nature of the offence involved and also considering the past conduct of the workman. He submitted that the certified standing orders of the employer provide for considering past conduct of the employee while imposing punishment which is clause 29 B(iii). In the course of the arguments he produced the copy of the certified standing orders. In support of his contention that the punishment of dismissal is justified, Adv. Shri Kamat relied upon the decision of the Punjab & Haryana High Court in the case of Ganga Ram V/s Pepsu Road Transport Corporation reported in 1995 I LLN 1035; the decision of the Rajasthan High Court in the case of Bhagirathal Rainwa V/s Judge, IT, reported in 1995 I CLR 925; the decision of the Bombay High Court in the case of P. J. Wani V/s Divisional controller, reported in 1995 I CLR 1052 and the decision of the Supreme Court in the case of State of Haryana V/s Rattan Singh reported in AIR 1977 SC 1512. The contention of Shri Cuncolienkar, representing the workman is that the employer should not have been allowed to lead evidence on the past record of the workman. His contention is that while imposing punishment past conduct of the employee cannot be considered. In support of his this contention he relied upon the decision of the Madhya Pradesh High Court in the case of Mardraran Lal V/s President, Industrial Court, M. P. Indore and others reported in 1996 (72)FLR (summary of cases) 11. The further contention of Shri Cuncolienkar is that the misconducts which are said to have been committed by the workman are the minor misconducts and therefore lesser punishment as that of imposing fine or giving warning should have been awarded to the workman. In this respect he relied upon the decision of the Madhya Pradesh High Court in the case of Gendalal V/S Factory Manager (Chemical) Grasim and others reported in 1994 (69) FLR 272.

14. I will first deal with the contention of the workman that the employer should not have been permitted to lead evidence on the past conduct of the workman, and that this past conduct should not have been considered while imposing punishment on him. He has relied upon the decision of the Madhya Pradesh High Court in the case of Haracharam Lal (supra) in support of his this contention. I have gone through the said decision and find that the relevant facts of the said case are not available. In the said case the view expressed by the Supreme Court in the case of State of Mysore v/s K. Manche Gowda reported in AIR 1964 SC 506 has been reproduced. In the said case the Supreme Court observed that there was nothing on record to show that the petitioner was informed that his past record would be considered while imposing punishment and therefore the order cannot be said to be passed properly. In the first place the case before the Supreme Court was concerning the Government servant who was governed by C.C.S. Conduct rules. This is not the case in the present case. Secondly the certified standing order of the employer which were produced by Adv. Shri Kamat in the course of his arguments, provide that the past conduct of the workman may be considered by the management at the time of imposing punishment. This is as per clause 29 B(iii) of the said certified standing orders. The certified standing orders govern the terms and conditions of service between the workman and the employer. Therefore, the employer was justified in considering the past record of the workman before imposing the punishment. Since the employer has to justify the order of dismissal passed against the workman, the employer is entitled to lead evidence on his past conduct before this Tribunal. Therefore there is no substance in the contention of the workman that the employer should not have been allowed to lead evidence on his past conduct or that his past conduct should not have been considered.

15. In the present case the workman was working as the conductor and hence was responsible for the collection of the revenue for the employer-corporation on which it could carry on its business. The employer has succeeded in proving that in the two incidents involved, the workman did not collect the fare from some passengers and allowed them to travel without tickets in respect of the incident of 11.10.87 and in respect of the incident of 23.10.87 he collected less fare from some passengers and also did not issue tickets to them. There is no doubt that the workman had dishonest intention in committing the above said acts which acts are serious misconducts. These acts cannot be termed as minor misconducts as contended by Shri Cuncolienkar, representing the workman, as the acts have resulted into loss of revenue to the employer corporation. The employer has brought on record evidence as regards the past conduct of the workman . The employer has produced the memos dated 26.10.84, 5.11.84, 27.11.84 and the replies of the workman to the said memos at Exb. 12 colly. The employer has also produced memos issues to the workman dated 5.12.84 (Exb.13), dated 12.12.84 (Exb.15), dated 6.2.86 (Exb.17), replies of the workman to the said memos dated 19.12.84 (Exb.14), dated 19.12.84 (Exb.16) and dated 20.2.86 (Exb.18). The above said memos are pertaining to the shortages attributed to the workman. The workman in the cross examination of Shri Anil Prabhu, the witness for the employer, has himself admitted that in respect of the shortages with reference to which memos were issued, fine was imposed on him and the matter was closed. The employer has also produced the default notice issued to the workman dated 3.3.86 (Exb.19) for finding excess amount with him and the order dated 24.3.86 (Exb.20) whereby the workman was fined for his lapse. The employer has also produced the memo dated 6.2.86 (Exb.17) issued to the workman for his absence from 29.1.86 to 2.2.86 which is admitted by him in his reply dated 20.2.86 (Exb.18) and the memo dated 30.6.1986 (Exb.21) towards shortages. The workman in his cross examination has admitted all the above memos issued to him. The workman has also not disputed that fines were imposed on him. On the contrary his contention is that the fines were paid. The above evidence proves that the past record of the workman was not good and that he was acting dishonestly which was detrimental to the interest of the employer. The contention of the workman is that the misconducts alleged to have been committed by him are the minor misconducts and therefore lesser punishment ought to have been awarded to him. He has relied upon the decision of the Madhya Pradesh High Court in the case of Gendalal (supra). In my view the decision of the Madhya Pradesh High Court is not applicable to the present case because the facts involved in both the cases are entirely different. In the case of Gendalal (supra) it was a case where the workman had remained absent without taking leave and the High Court held that censure or warning was sufficient. In the present case due to the misconducts committed by the workman there was loss of revenue to the employer. Therefore the case of Gendalal cannot be equated with the case of the workman. The employer has relied upon various authorities to justify the dismissal order. I have gone through the said decisions. The Punjab & Haryana High Court in the case of Ganga Ram (supra) has held that even if the amount of embezellement is small, the offence is a serious offence and if a bus conductor in a road Transport Corporation is dismissed for not issuing tickets to passengers after collecting fare, the dismissal cannot be said to be disproportionate to the proved charge. In the case of Bhagirathmal Rainwa (supra) the petitioner Rainwa was dismissed from service for carrying passengers without ticket after collecting fare from them. The Tribunal held that the punishment of dismissal was proper. This order was challenged before the Rajasthan High Court who held that the order of dismissal from service was proper and justified on the ground that misconduct involving misappropriation and cheating does not deserve leniency. In the case of Pandurang Kashinath Wani (supra) the Bombay High Court held that the punishment of dismissal from service was justified as the conductor was guilty of issuing used tickets, he had also collected fare from the passengers but had not issued tickets, excess amount was found with him and also he had committed other similar misconducts. In the case of Rattan Singh (supra) the Supreme Court held that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act, are

not applicable. In this case also the workman was employed as a conductor and the misconducts charged and proved against the workman were that of non-issuing of tickets to the passengers after collecting fare from them. The Supreme Court did not interfere with the action of the employer of terminating the services of the workman Shri Rattan Singh. In another case, that is, in the case of Gujrat State Road Transport Corporation V/s Kacharaji Motiji Parmar reported in 1993. I CLR 894 the respondent bus conductor was dismissed from service by the Corporation on having been found guilty of charges amongst others such as collecting fare from the passengers and not issuing tickets to them, and also not issuing tickets at all to some passengers. The Labour Court set aside the order of dismissal and directed reinstatement withback wages. However, the Gujrat High Court allowed the petition filed by the Corporation and set aside the order of the Labour Court on the ground that the respondent conductor had committed grave misconduct and that his past conduct was also not good.

16. From the above referred authorities it can be seen that these were the cases where the conductor had committed misconduct of the like committed by the workman in the present case and the courts held that the misconduct was grave and therefore the punishment of dismissal from service was proper and justified. In the present case also the same principles are applicable. Besides, the evidence on record shows that the past conduct of the workman was also not good and his acts were that of dishonesty. In the circumstances, I hold that the action of the employer, based on the report of the Enquiry Officer, in terminating the services of the workman w.e.f. 7.11.88 is just and proper in the circumstances of the case and no interference in the punishment awarded is called for. I further hold that action of the employer in terminating the services of the workman w.e.f. 7.11.88 is legal and justified. I answer the issue accordingly.

17. Issue No. 5: It has been held by me that the action of the employer in terminating the services of the workman w.e.f. 7.11.88 is legal, just and proper and no interference in the punishment awarded is called for. In the circumstances the workman is not entitled to any relief. I, therefore answer the issue accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Kadamba Transport Corporation Limited, Panaji, in terminating the services of the workman Shri Arjun S. Kuttikar, Conductor, with effect from 7.11.1988 is legal and justified. It is hereby further held that the workman Shri Arjun S. Kuttikar is not entitled to any relief.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal

Notification

No. 28/10/92-LAB/7426

Whereas the Government of Goa is satisfied that public interest so requires that the services in the hotel industry (hereinafter called as the "said service"), should be declared to be a public utility service for the purposes of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter called the 'said Act').Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the said Act, the Government of Goa hereby declares the said service to be a public utility service for the purposes of the said Act, for a period of six months with efect from the date of publication of this Notification in the Official Gazette.

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 20th February, 1998.

Department of Science & Technology

Notification

No. 7/10/90-STE/1151

The Government of Goa hereby rescinds the Government Notification No. 7/10/90-STE dated 13-11-1998 with immediate effect.

By order and in the name of the Governor of Goa.

Dr. *N. P. S. Varde,* Director/Jt. Secretary (STE)..

Panaji, 17th December, 1998.

Department of Social Welfare

Directorate of Women & Child Development

Notification

No. 4/19/96/SWD/W/CD/1064

In exercise of the powers conferred by section 4 of the Goa State Commission for Women Act, 1996 (Goa Act 10 of 1996) read with section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897), the Government of Goa hereby further amends the Government Notification No. 4/19/96-SWD dated 8/5/1998, published in the Official Gazette Series II No. 17 dated 23-7-1998 (hereinafter called the "said Notification").

In the said Notification, for the existing entry at serial No. (9), the following entry shall be substituted, namely:-

"(9)	Director of Women & Child Development, Panaji.	— Member Secretary.

By order and in the name of the Governor of Goa.

Pukh Raj Bumb, Secretary (Women & Child Development).

Panaji, 29th September, 1998.

Directorate of Social Welfare

Corrigendum

No. 13/19/89/SWD/2702

Read: Govt. Notification No. 13/19/89/SWD dated 12-10-1998.

In Government Notification read above the name appearing at Sr. No. 2 may be read as" Shri Shantaram Kamble" Vice-Chairman of the Committee constituted to look after the interests of Scheduled Castes and Scheduled Tribes in the State of Goa, instead of "Shri Sakharam Kamble".

P. S. Nadkarni, Director of Social Welfare and Ex-Officio Jt. Secretary.

Panaji, 11th November, 1998.

Department of Town & Country Planning

Order

Ref. No. 4-5-84-UDD (Part)/233

Government is pleased to order transfers of the following Officers (Group) 'A') in the places indicated against each:

Sr. No.	Name of the officer and present posting	Place of transfer
1	2	3
1.	Shri E. R. Godinho, Member Secretary, North Goa Planning & Dev. Authority.	Ponda Taluka level office of Town & Country Planning Deptt. Ponda vice Shri James Mathew, Dy. Town Planner.
2.	Shri Jamesh Mathew, Dy. Town Planner, Ponda Taluka office of Town & Country Planning Department.	South Goa Planning & Development Authority, Margao vice Shri Mansab Ali, Member Secretary S. G. P. D. A.
3.	Shri Mansab Ali, Member Secretary, South Goa Planning & Dev. Authority.	Tiswadi Taluka level office of Town & Country Planning Deptt. Panaji vice Shri S. T. Puttaraju Town Planner.
4.	Shri S. T. Puttaraju, Town Planner, Tiswadi Taluka office, Panaji.	North Goa Planning and Dev. Authority, Panaji vice Shri E. R. Godinho Member Secretary, NGPDA.

The deputation of S/Shri S. T. Puttaraju and James Mathew as Member Secretary in N. G. P. D. A. and S. G. P. D. A. respectively shall be initially for a period of one year and shall be governed as per the standard terms and conditions contained in Personnel Department O. M. No. 13/4/74-PER dated 10-10-1990.

Shri S. T. Puttaraju, Town Planner should move first.

By order and in the name of Governor of Goa.

R. N. Ray, Chief Town Planner/Ex-Officio Jt. Secretary.

Panaji, 23rd June, 1998.

Notification

Ref. No. 4-5-2-84-UDD (Part)/415

Read:- 1. Govt. Notification No. 4-5-2-84-UDD (Part)528 dated 16/5/97.
2. Addendum No. 4-5-2-84-UDD (Part) 588 dated 16-6-97.
3. Addendum No. 4-5-2-84-UDD (Part) 983 dated 30-7-97.
4. Addendum No. 4-5-21-84-UDD (Part) 1139 dated 21-11-97.
5. Notification No. 4-5-2-84-UDD (Part) 218 dated 18-6-98.

In exercise of the powers conferred by sub-sections (1) and (3) of Section 20 of the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), read with rule 3 of the Goa, Daman and Diu Town & Country Planning (Planning and Development Authorities) Rules, 1977 and section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897), the Government of Goa hereby amends the Government Notification No. 4-5-2-84-UDD (Part) 528 dated 16-05-1997, published in Official Gazette Series II, No. 7 dated 19-05-1997 (hereinafter called the "said Notification"), as follows:-

In the said Notification, the entries at serial Numbers (1), (2), (3), (4), (5), (6) and (7) shall be omitted.

By order and in the name of the Governor of Goa.

R. N. Ray, Chief Town Planner & Ex-Officio Jt. Secretary.

Panaji, 23rd September, 1998.

Notification

Ref. No. 4-5-2-84-UDD (Part)/416

Read:- 1. Govt. Notification No. 4-5-2-84-UDD (Part)527 dated 16-5-97.
2. Addendum No. 4-5-2-84-UDD (Part) 982 dated 30-7-97.
3. Addendum No. 4-5-2-84-UDD (Part) 1010 dated 27-8-97.

In exercise of the powers conferred by sub-sections (1) and (3) of Section 20 of the Goa, Daman and Diu Town and Country Planning Act, 1974 (Act 21 of 1975), read with rule 3 of the Goa, Daman and Diu Town & Country Planning (Planning and Development Authorities) Rules, 1977 and section 21 of the General Clauses Act, 1897 (Central Act 10 of 1897), the Government of Goa hereby amends the Government Notification No. 4-5-2-84-UDD (Part) 527 dated 16-05-1997, published in Official Gazette Series II, No. 7 dated 19-05-1997 (hereinafter called the "said Notification"), as follows:-

In the said Notification, the entries at serial numbers (1), (2), (3), (4), (5), (6), (7) and the name of Dr. Pedro Bravo Costa appearing therein shall be omitted.

By order and in the name of the Governor of Goa.

R. N. Ray, Chief Town Planner & Ex-Officio Jt. Secretary.

Panaji, 23rd September, 1998.

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